

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition for Exemption of Electric
Substation Additions from Zoning
Ordinance of Salem, Massachusetts
Pursuant to Mass. Gen. L. c. 40A § 3.

D.T.E. 03-128

NEP's RESPONSE
TO THE CITY OF SALEM'S MOTION TO SUPPLEMENT THE RECORD

To the Honorable Department of Telecommunications and Energy:

1. New England Power Company ("NEP") does not oppose the Motion of the City of Salem to supplement the record in the above captioned proceeding. However, as described below, NEP does object to the City's Motion to the extent that it mischaracterizes evidence already in the record and mischaracterizes the evidence the City seeks add to the record.
2. First, in ¶ 1 of its Motion, the City has misidentified the issue before the Department. It depicts the proceeding as "whether NEP is entitled to a zoning exemption in accordance with M.G.L. c. 40A § 6." That section of the statutes deals with the application of zoning ordinances to preexisting structures. NEP is not seeking a zoning exemption pursuant to M.G.L. c. 40A §6.
3. In ¶ 4 of its Motion, the City indicates that Dominion has "reached an agreement to purchase three USGen New England power plants, including the *Salem power plant facility in question* [emphasis added]."
4. The facility in question in this proceeding is NEP's 115 kV Switchyard facilities located in Salem, *not* any of the three US Gen New England power plants referred to in Dominion's press release.
5. The press release is noteworthy only in that it suggests a forthcoming potential change in plant ownership. As such, it is of no discernible significance to this

docket which seeks to exempt from local zoning a much-needed voltage support project for the benefit of North Shore electricity consumers.

6. At ¶ 5, the City states the press release contains crucial information because “it impacts NEP’s assertions regarding the adequacy of the power supply to the region.” The intent of NEP’s proposed Project is not to address power supply issues, but to address voltage support requirements.
7. The City’s allegation at ¶ 5 that NEP has made “assertions regarding the adequacy of the power supply to the region” mischaracterizes evidence already in the record, about contingency planning conducted by NEP relative to the need for the proposed Project. That planning, as shown in testimony, (Tr. 140, Line 5 through 146, Line 15), did consider the import limitations in the NEMA area. However, characterizing those considerations as assertions regarding the adequacy of the power supply to the region is factually and technically incorrect.
8. As recently briefed by NEP and USGenNE, the standard of review in this proceeding requires the petitioner (1) qualify as a public service corporation, (2) establish an exemption from the zoning ordinance is needed, and (3) demonstrate the proposed use is reasonably necessary for the public convenience or welfare. The City’s assertion in ¶ 6 that Dominion’s alleged agreement to purchase, subject to a myriad of uncertainties, a facility which is not the subject of this proceeding “directly affects whether NEP meets the standard necessary for an exemption” is contrary to Department precedent controlling the issuance of zoning exemptions. Mass. Electric Co., D.T.E. 01-77 (2002).

WHEREFORE, while the Company does not object to the City's Motion to Supplement the Record, *per se*, it does respectfully request that the Department take notice of and move in to the record NEP's objections to the mischaracterizations of evidence contained in the City's Motion.

Respectfully Submitted,

s/Paige Graening

Paige Graening

September 16, 2004
Westborough, Massachusetts